
Audit of the Family Court Complaints Process

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

Report No. 02-23
December 2002



THE AUDITOR
STATE OF HAWAII

Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawaii State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. *Financial audits* attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. *Management audits*, which are also referred to as *performance audits*, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called *program audits*, when they focus on whether programs are attaining the objectives and results expected of them, and *operations audits*, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. *Sunset evaluations* evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
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5. *Health insurance analyses* examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.
6. *Analyses of proposed special funds* and existing *trust and revolving funds* determine if proposals to establish these funds are existing funds meet legislative criteria.
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THE AUDITOR STATE OF HAWAII

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OVERVIEW

Audit of the Family Court Complaints Process

Report No. 02-23, December 2002

Summary

This audit was conducted pursuant to Senate Concurrent Resolution No. 82, S.D. 1, H.D. 1 of the 2002 Regular Session. The resolution requested the Auditor to conduct an audit of the Family Court's complaints process. The request for the audit was prompted by legislative concerns over the alleged loss of user confidence in the Family Court's ability to be a fair arbiter of issues and the perceived unfairness in the system. The resolution also requested that the Auditor review complaints at the courts and from the public and summarize the nature of the complaints.

The Judiciary is separate and distinct from, but equal to, the executive and legislative branches of government. The Family Court's jurisdiction includes legal matters involving families and children such as delinquency, status offenses, abuse and neglect, parental rights, adoption, guardianship, divorces, and custody. Section 571-11, Hawaii Revised Statutes, establishes the Family Court as a division of the circuit courts.

Various processes have been made available by the Judiciary and other state agencies to address complaints in court-related matters. The Commission on Judicial Conduct deals with complaints against judges. The Office of the Disciplinary Counsel covers complaints against attorneys and reports to the Disciplinary Board of the Judiciary. The State Ethics Commission investigates alleged ethics violations of state employees. The judicial appeals process addresses individuals who disagree with the results of a case or wish to complain about a court's ruling. For each of these complaints processes, specific statutes or rules describe how various aspects such as complaints initiation, subject matter, standards to measure conduct, and resolution are to be handled.

We reviewed complaints recorded at the Family Court and complaints solicited from the public by our office. We did not assess the validity of these complaints nor investigate any allegation in the complaints. We found few complaints at the Family Court, but limits to our access to correspondence files reduced our ability to determine whether our assessment was reliable. Complaints submitted by the public to our office were numerous but seemed to be directed at changing a case's outcome.

We found that the Family Court lacks a system to manage complaints and direct complainants to an appropriate agency resulting in inconsistent complaint resolution. In addition, court staff lack adequate policies and procedures and sufficient training to guide them in providing consistent answers and resolution to complainants. Inconsistent handling of complaints reduces the Family Court's opportunities for improving court services. Complaints may contain valuable



feedback to improve program effectiveness. The State's civil service reform provides a framework for a public complaints process.

The Judiciary implemented the service centers, concierge desks, and "we value your opinion" surveys to improve customer service. An increase in self-represented litigants adds to complexities for the court and results in the need for more user-friendly and effective customer service processes. We found that legal obstacles, and the lack of policies, procedures, and training contribute to hindering the staff's effectiveness in providing customer service and in informing the public about the court system. We also found the survey to be one-sided and poorly administered. While initial evaluations of the service centers and surveys showed positive results, our review indicates that the programs are no longer effective in meeting customer needs and should be re-evaluated.

Recommendations and Response

We recommended that the Family Court develop policies and procedures for handling complaints and train staff in all complaints processes available to the public. The Judiciary should use the State's civil service reform as a guide in developing a public complaints process, which should include procedures for documenting and recording complaints. We also recommended that the Family Court better inform the public about available complaints processes through detailed brochures. Finally, we also recommended the Judiciary revise its public opinion surveys to include in-court experiences, analyze all data collected on the surveys, re-establish data measurement guidelines for its service centers, and re-evaluate the effectiveness of the service centers.

The Judiciary responded that it appreciated our efforts, found our recommendations helpful, and will seriously consider them in light of available resources. However, the Judiciary disagreed with certain observations relating to our limits to file access and found no evidence to indicate its service centers were ineffective in executing the functions for which it was created.

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Submitted by

THE AUDITOR
STATE OF HAWAII

Report No. 02-23
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Foreword

This is a report of our audit of the Family Court's complaints process. This audit was conducted pursuant to Senate Concurrent Resolution No. 82, Senate Draft 1, House Draft 1, of the 2002 Regular Session.

We wish to express our appreciation for the cooperation and assistance extended by officials and staff of the Judiciary's Family Court and others whom we contacted during the course of the audit.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

This audit was conducted pursuant to Senate Concurrent Resolution (S.C.R.) No. 82, Senate Draft 1, House Draft 1 of the 2002 Regular Session. The resolution requested the Auditor to perform an audit of the Family Court's complaints process. The request for the audit was prompted by legislative concerns over the alleged loss of user confidence in the Family Court's ability to be a fair arbiter of issues and perceived unfairness in the system. The Legislature believed that resolving the perceived unfairness, if verified, would be consistent with the Judiciary's ongoing efforts to improve the delivery of court services, customer service, and customer satisfaction.

The Family Court Is One of the Judiciary's Court Systems

The State of Hawaii's judicial branch is separate and distinct from, but equal to, its executive and legislative branches. Article VI, Section 1 of the State Constitution establishes Hawaii's court system and provides that the Legislature may establish other courts.

Circuit and district courts make up Hawaii's trial level courts. The Supreme Court and the Intermediate Court of Appeals represent the Judiciary's appellate level courts; and courts of appeals hear appeals from all trial courts and specific state boards and agencies.

Circuit courts' jurisdiction includes hearing criminal cases of offenses committed in the respective circuits or transferred by change of venue; actions for penalties and forfeitures incurred under state laws; and civil actions and proceedings. The district courts' jurisdiction includes hearing civil actions in which claims do not exceed \$20,000; criminal offenses punishable by fine or by imprisonment not exceeding one year, with or without a fine; and violations of county ordinances.

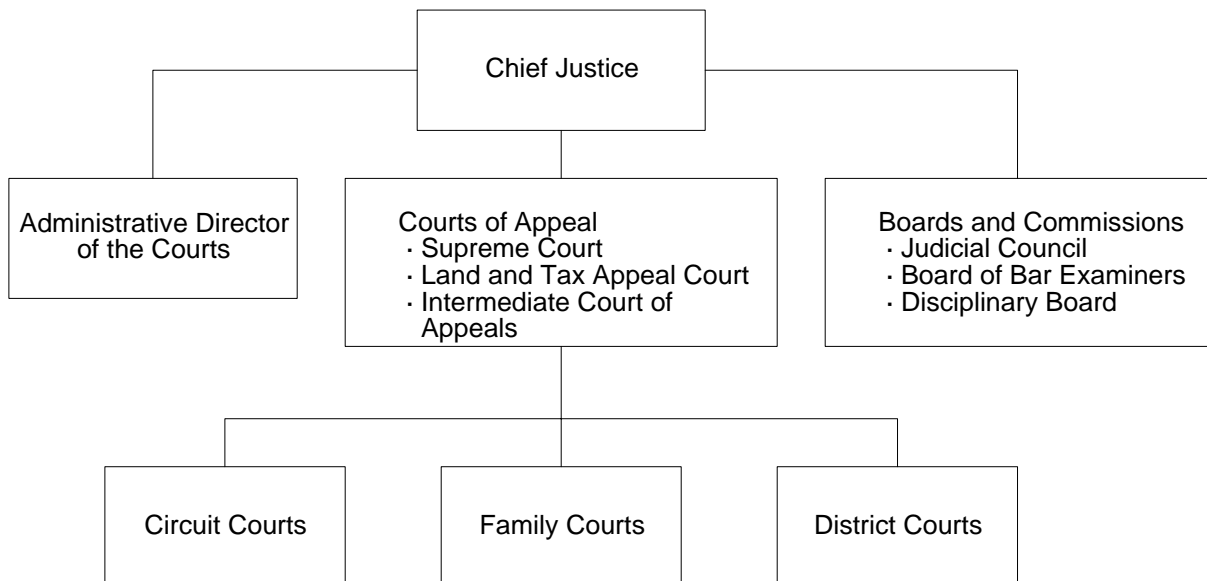
The Family Court presides over family related disputes in four judicial circuits

In 1965, the Legislature established the Family Court as a division of the circuit courts. Section 571-11, Hawaii Revised Statutes (HRS), provides the Family Court with jurisdiction over all legal matters involving families and children. These matters include delinquency, waiver, status offenses, abuse and neglect, termination of parental rights, adoption, guardianships, and detention. The Family Court also hears traditional cases (including divorce, nonsupport, and paternity), uniform child custody jurisdiction cases, and miscellaneous custody matters.

Hawaii's Family Court functions in four judicial circuits that correspond approximately to the geographical areas served by Hawaii's counties. The First Judicial Circuit serves the City and County of Honolulu; the Second serves Maui County, which encompasses the islands of Maui, Moloka'i (including the settlement of Kalawao), and Lana'i. The Third Judicial Circuit, divided into the districts of Hilo and Kona, serves the County of Hawai'i. The Fifth Judicial Circuit serves the County of Kaua'i, including the islands of Kaua'i and Ni'ihau. The Fourth Judicial Circuit was eliminated when it was merged with the Third Circuit in 1943.

A Board of Family Court Judges, established by Section 571-5, HRS, institutes general policies for the Family Court's conduct. The board consists of all of the State's Family Court judges. Exhibit 1.1 describes the organization of Hawaii's court system as presented in the Judiciary's 2001 annual report.

Exhibit 1.1 Organization of Hawaii's Court System



Source: The Judiciary, 2001 Annual Report

The Legislature appropriates over \$20 million annually to Family Courts

For the past three fiscal years, appropriations, expenditures, and staffing for the Family Court have increased. In FY1998-99, the Family Court was appropriated \$25.2 million in general funds and over \$232,500 in

special funds. These numbers increased to \$28.8 million in general fund appropriations and over \$455,000 in special funds for FY2000-01. Expenditures during the same period (FY1998-99 to FY2000-01) increased from \$26.9 million to \$29.5 million, while staffing increased from 408 to 420 positions. Exhibit 1.2 shows the appropriations, expenditures, and staffing levels of the Family Court for the past three fiscal years. When expenditures exceed appropriations for the Family Court, the chief justice has the power to authorize transfers from other court accounts or appropriations to keep the Judiciary's overall expenditures within its appropriations.

Exhibit 1.2
Family Court Appropriations, Staff, and Expenditures for FY1998-99 through FY2000-01

Fiscal Year	General Fund Appropriations	Special Fund Appropriations	Judges	Other	Total Staffing	Expenditures
1998-99	\$25,245,595	\$232,500	15	393	408	\$27,152,566
1999-00	\$26,537,136	\$386,575	16	396	412	\$27,900,173
2000-01	\$28,824,813	\$455,580	17	403	420	\$29,504,533

Source: Judiciary annual reports for 1998 to 2001.

Nearly 50,000 family court cases are filed annually

For each of the past three fiscal years, the Family Court has had nearly 50,000 case filings. During FY1998-99, 48,689 people filed cases, and the Family Court reported a caseload of 79,812 cases. In FY1999-2000, the Family Court reported that 51,414 cases were filed, and its caseload was 81,622. Total caseload and cases filed for FY2000-01 decreased to 54,347 and 34,181 cases respectively.

The decrease in case filings in FY2000-01 resulted from the Judiciary's exclusion of supplemental proceedings from the number of case filings. In FY1999-2000 supplemental proceedings (such as a motion to show cause) accounted for 18,743 or 36 percent of case filings.

The Judiciary's ACE project created customer service initiatives through the Ho'okele program

In 1998, the Hawaii State Judiciary began its Achieving Court Excellence, or ACE, project. As part of the project, the Judiciary examined its structure, procedures, and scope of functions to develop a plan to better meet the needs of the people of Hawaii. The goal was to develop recommendations and strategies for a more efficient and effective Judiciary system by reducing duplication, facilitating cost savings, and improving operational and organizational efficiency.

The ACE project also incorporated the Ho‘okele Court Navigation Program, which the Judiciary launched as a pilot project in the First Judicial Circuit in August 1999 and permanently established in that circuit in September 2001. The program consists of four courthouse stations. Two stations, the Family Court Service Center and the Circuit Court Concierge Desk, are located at the Circuit Court of the First Circuit. The other two stations, the District Court Civil Division Service Center and the District Court Concierge Desk, are located at the First Circuit District Court.

To permanently establish Ho‘okele, the Judiciary transferred 11 vacant positions from the District Court and the Circuit Court and one position with its incumbent from the Family Court to staff the program. Ten of these positions were redescribed and upgraded to higher level positions.

Ho‘okele service centers provide self-help packets

The Ho‘okele service centers provide self-help packets and information about court proceedings, information about services provided by related Judiciary offices and external agencies, computer access to court forms, case status information, a copy machine, and typewriters to fill out court forms. Self-help packets contain court forms that the Judiciary has simplified with instructions and checkboxes for non-lawyers to use in certain court matters. The service centers also provide one-on-one explanation of court forms and procedures, and assistance in the completion of court forms.

The Family Court Service Center’s self-help packets include information regarding court proceedings for guardianship, paternity, adoption, child support, and certain divorces. The District Court Civil Division’s self-help packets deal with small claims, regular claims, temporary restraining orders, post-judgment actions and landlord-tenant disputes.

A court documents supervisor oversees the overall Ho‘okele Court Navigation Program and also performs day-to-day supervision of the Family Court Service Center. Four lower level court documents clerks staff the Family Court Service Center and may rotate to staff the Circuit Court Concierge Desk during busy business hours. At the Family Court Service Center, a clerk III directs court users to court hearings and hands out self-help packets.

At the service center of the District Court Civil Division, a court documents clerk III supervises three lower-level court documents clerks. These clerks staff the service center and rotate to staff the concierge desk at the district court during peak business hours.

Concierge desks provide direction for the public

The concierge desks at the circuit and district courts provide directions not only to offices and programs within their respective buildings, but also to other Judiciary offices or buildings; and related offices and agencies in the vicinity. A staff person at the concierge desk identifies the Judiciary office or program that will satisfy the court user's needs, locates which court and courtroom a specific case is being heard, and provides referrals to appropriate external agencies. One judicial clerk II staffs each concierge desk.

Various Avenues Are Available to Address Grievances Relating to the Court System

Various resources have been established to address the public's complaints in court-related matters. For example, the Commission on Judicial Conduct deals with complaints against judges. The Office of Disciplinary Counsel covers complaints against attorneys and reports to the Disciplinary Board of the Judiciary. The State Ethics Commission investigates alleged ethics violations of state employees. Finally, the judicial appeals process addresses individuals who disagree with the results of a case or wish to complain about a court's ruling. For each of these complaint processes, specific statutes or rules describe how various aspects, such as complaints initiation, subject matter, standards to measure conduct, and resolution are to be handled.

The Commission on Judicial Conduct investigates judges' conduct

Established on June 1, 1979 by the Supreme Court of Hawaii, the Commission on Judicial Conduct investigates complaints against judges. The commission evaluates a judge's actions against the Supreme Court's Code of Judicial Conduct to determine whether the actions constitute judicial misconduct. However, "judicial misconduct" does not include making erroneous findings of fact, reaching an erroneous legal conclusion, or erroneously applying the law.

Any person may file a complaint to the commission relating to a judge's conduct. The commission may dismiss the complaint, conduct additional investigations, hold a formal hearing, and/or recommend sanctions against the judge to the Supreme Court. However, filing a complaint with the commission is not a substitute for an appeal nor can the complaint change a judge's decision.

The commission dismisses complaints deemed frivolous, unfounded, outside the commission's jurisdiction, or appealable, in which case the commission informs the complainant of the dismissal. In some cases, the commission may recommend to the Supreme Court that it issue a private reprimand, admonish the judge, direct counseling or assistance to the judge, or impose conditions on the judge's conduct.

The commission recommends discipline to the Supreme Court when the charge is proven by clear and convincing evidence. Sanctions recommended may include: removal from office, retirement, imposition of limitations or conditions on judicial performance, suspension, private reprimand, public censure, suspension from the practice of law, disbarment, or any combination of these sanctions. Only the Supreme Court can impose disciplinary action against a judge. Depending on the complexity of a complaint, final disposition may take several months.

The Supreme Court of Hawaii appoints seven members for staggered three-year terms to the commission; three members are licensed attorneys, and four must be citizens who are not active or retired judges or attorneys.

***The Office of the
Disciplinary Counsel
investigates attorneys’
conduct***

The Office of the Disciplinary Counsel investigates complaints against lawyers and recommends appropriate discipline to the Disciplinary Board of the Hawaii Supreme Court. The Disciplinary Board, which is appointed by the Supreme Court, appoints the disciplinary counsel. The disciplinary counsel in turn enforces the standards of the Hawaii Rules of Professional Conduct that govern attorney conduct. Lawyers who violate such rules may be charged with unethical conduct and be subject to disciplinary action that affects their licensure.

Any person may file a complaint against an attorney by submitting a letter describing the lawyer’s allegedly improper actions. Under the Rules of Professional Conduct, unethical conduct includes such actions as lack of diligence or communication, misappropriation, misrepresentation, conflict of interest, or disclosure of confidential information. However, unethical misconduct does not include every instance of inadequate representation or poor performance by an attorney. An attorney’s error in judgment or mistake in handling a case may not necessarily be unethical misconduct; however, the attorney may be subject to being sued for “negligence” or “malpractice.”

The Disciplinary Board reviews the complaint and evidence collected by the disciplinary counsel and takes appropriate action. The board may dismiss the complaint, impose a private informal admonition, or commence a formal disciplinary hearing for discipline more serious than an informal admonition. The discipline remains on the attorney’s record and may be considered in assessing future alleged violations.

In a formal disciplinary hearing, a three-member committee appointed by the board chair convenes the hearing, which is like a civil trial. The Office of the Disciplinary Counsel or the attorney can appeal the board’s disciplinary decision if either party disagrees with the admonition or

reprimand. The board may also recommend to the Supreme Court to disbar or suspend the attorney. In these situations, the Supreme Court independently reviews the entire case.

Created in 1974, the Disciplinary Board consists of 18 members appointed separately from a list of nominees submitted by the governing board of the Hawaii Bar. Membership includes both lawyers and non-lawyers, all appointed to staggered three-year terms.

The State Ethics Commission investigates alleged ethics violations

The State Ethics Commission was established in January 1968 to promote and enforce standards of ethical conduct in government and preserve public confidence in public servants. The commission's responsibilities include administering and enforcing the State Ethics Code, Chapter 84, HRS and the State Lobbyists Law, Chapter 97, HRS. Chapter 84 provides the commission with the authority to investigate ethics violations of any state employee except justices and judges. The State Ethics Code involves such matters as conflicts of interest, misuse of confidential information, misuse of official position, misuse of state resources, representation of clients before state and county agencies, and post-employment restrictions.

The public may file complaints with the commission by completing a notarized statement setting forth the alleged violator's name and public position, and describing the facts constituting the alleged violation. The commission investigates all charges on a confidential basis. If the commission finds probable cause to believe a violation of law occurred and that a hearing should be held, the commission will conduct a hearing. The decision and record of the proceedings are then made public.

The State Ethics Commission is made up of five members who are appointed by the governor from a panel of persons nominated by the Judicial Council of the Hawaii Supreme Court. The Judicial Council nominates two individuals for each position, and the governor selects from this list of nominees.

The judicial process contains procedures to address dissatisfaction with court rulings

A person aggrieved over a judge's ruling can either file a motion to reconsider or an appeal. An appeal has three possible results: to affirm, reverse, or "vacate and remand with instructions." The court of appeal may affirm the case by deeming that the trial court was correct. The court may instead reverse the case, meaning the side that lost during trial is now the winner. If the court rules to "vacate and remand with instructions," it means the case is sent back to the trial court with certain instructions. A motion to reconsider, if approved, is heard by the same judge who conducted the original hearing. The judge may not approve

the motion if the person filing it does not make a show of good cause. An appeal differs from a motion to reconsider because a court of appeal, not the original court, conducts the rehearing.

Various court rules explain the procedural requirements for filing a motion to reconsider or appeal. For example, Rule 59(e) of the Hawaii Family Court Rules provides that a person may file a motion to reconsider, alter, or amend a judgment or order not later than 10 days after the order or judgment is filed with the clerk of the court. Section 571-54, HRS, allows for an appeal of an order or decree of the court to the Supreme Court. Rule 4(a)(1) of the Hawaii Rules of Appellate Procedures specifies the time limit within which the appellant (person filing the appeal) must file the notice to appeal. Other procedural requirements for filing an appeal are provided in the Hawaii Rules of Appellate Procedures.

In addition to filing a motion to reconsider or an appeal, the law also allows a person to petition the Family Court to change a judgment or order for certain situations and because circumstances have changed. For instance, Section 571-50, HRS, in conjunction with Rule 60 of the Family Court Rules, provides that a parent may petition the Family Court to rehear a decree or order based on certain circumstances and requirements. These circumstances and requirements differ for different types of cases. For example, a petition to change a child support order requires a showing of changed circumstances and can only be done once every three years unless there is a showing of substantial or material change of circumstances. Similarly, adoption proceedings impose a one-year limit to submit the petition to reopen unless fraud was committed.

Objectives

1. Assess the adequacy of the Family Court's process for receiving and managing complaints made against the court.
2. Determine the nature of the complaints lodged against the Family Court.
3. Make recommendations as appropriate.

Scope and Methodology

We evaluated the Family Court's management of complaints and the effectiveness of the Judiciary's efforts to address complaints made against the Family Courts. We identified available avenues for filing complaints and evaluated steps used by the Judiciary and the Family Courts to receive, address, and resolve consumers' complaints against the Family Courts. We selected the Family Court's service center,

concierge, and customer surveys and assessed the efficiency, effectiveness, and legal compliance of Judiciary and Family Court management, functions, operations, and training as they related to complaints processing and other programs used to address complaints or to serve the public.

We attempted to identify the nature, but not the validity, of complaints or decisions made by judges, commissions, offices, and agencies designated to investigate complaints relating to the Family Courts. We defined “complaints” to mean any expression of dissatisfaction lodged with the Judiciary concerning any aspect of the family court system—for example, dissatisfaction with judges, their decisions, court staff, attorneys, procedures, or practices. However, our definition of “complaints” does not include legal pleadings filed by plaintiffs to initiate lawsuits (as defined by Rule 3 of the Hawaii Family Court Rules). We examined similar Family Court activities in all judicial circuits, focusing on fiscal years 1999-2000 through 2001-02.

In our fieldwork, we interviewed senior family court judges, family court judges, court administrators, customer service representatives, and Judiciary administrative personnel. We evaluated the adequacy of the Family Court’s current management reports and documented the existence or absence of formal policies and procedures. We also interviewed the Chair of the Commission on Judicial Conduct, Office of the Disciplinary Counsel, Hawaii State Bar Association, the Public Defenders Office, Legal Aid Society of Hawaii, Child and Parent Advocate Association, and private organizations that submitted testimony on S.C.R. No. 82, S.D. 1, H.D. 1.

We reviewed and used as criteria applicable state statutes, including Chapter 571, HRS (Family Courts), Act 253, SLH 2000 (Civil Service Reform), applicable Rules of the Court, and complaints processes used nationally by Ombudsmen’s offices and other jurisdictions’ court systems. We reviewed publications of several national organizations including the American Bar Association, National Center for State Courts, Conference of State Court Administrators, American Judicature Society, and the Pro Se Law Center. We also reviewed complaint files, correspondence files, and selected case files to identify complaints against the Family Courts.

To determine complaints in case files, we used statistical methods to draw a random sample of files from a list of cases provided by the courts. The Family Court provided us with case files that consisted of all Family Court cases, on record, from various categories, such as paternity, child custody, and divorce for FY1998-99 to FY2001-02. We also requested from the family court judges and chief court administrators all

correspondence files containing complaints. We were not able to review all correspondence, as the senior family court judges denied our right to access some correspondence based on confidentiality restrictions and privacy concerns for children.

In accordance with S.C.R. No. 82, S.D. 1, H.D. 1, we received complaints for a reasonable period of time. In newspapers of general circulation, we advertised our office's availability to receive complaints. The ad appeared for five consecutive days; the deadline for submitting complaints was on day six. We did not review complaints received after the one-week period. The ad indicated that we would not follow up on the individual's case or assess the validity of the complaint. The ad instructed individuals to summarize their complaints in no more than two pages including any attachment. Complaints could be delivered or e-mailed. We reviewed, compiled, and summarized the complaints received.

We also used policies and procedures provided by the Judiciary and the U.S. General Accounting Office (GAO) standards for internal controls, strategic planning, and information systems as applicable.

In this report, we explain and describe some of the court procedures within the context of complaints processing, customer service, and management of the Judiciary and the Family Court. These explanations, descriptions, and references to court procedures and rules are *not* intended to provide legal advice.

The audit was conducted from June 2002 through September 2002 in accordance with generally accepted government auditing standards.

Chapter 2

Improvements to Complaints Processing and Customer Service Could Benefit the Family Court and Its Customers

Across the nation, state courts have been concerned about the public's trust and confidence in the court system. Led by the U.S. Supreme Court, many states' court systems have started studying how to improve their public image and increase the public's trust. The Hawaii State Judiciary has followed this lead by implementing several customer service initiatives to better serve the public.

An effective complaints management system is an important aspect of customer service and can contribute toward improving the public's trust and confidence in the court system. In this chapter, we review the Hawaii Family Court's processing of complaints and some of the Judiciary's customer service initiatives that play a significant role in the processing of complaints.

Summary of Findings

1. The Family Court's unsystematic processing of complaints, resulting from the lack of policies, procedures, and training, reduces the court's effectiveness at resolving complaints and improving services.
2. Poor planning diminishes the effectiveness of the Family Court's customer service efforts in resolving problems. Customer service needs to be re-evaluated to determine whether it meets the Judiciary's goal of increasing public trust and confidence.

Unsystematic Handling of Complaints Diminishes the Family Court's Effectiveness at Resolving Complaints and Improving Services

We found few complaints at the Family Court, but limited access to correspondence files reduced our ability to determine whether our assessment was reliable. Complaints submitted by the public to our office were numerous and seemed to be directed at changing a case's outcome.

We also found that more systematic handling of complaints by the Family Court would improve complaints resolution and court services. Currently, the various judicial circuits handle complaints inconsistently. The Family Court should implement more controls to produce consistent and effective resolutions. In addition, greater attention to and tracking of complaints would provide opportunities to improve court services.

Review of Family Court files and materials submitted by the public was conducted to identify the nature of complaints

Following legislative intent, we reviewed complaints recorded at the Family Court and solicited from the public by our office. We did not assess the validity of these complaints nor investigate any allegation in the complaints. Although we found few complaints at the Family Court, we note that the Family Court restricted our access to correspondence files. As a result, we could not verify the true number of complaints nor reliably conclude anything about them generally. In contrast, our solicitation of complaints from members of the public produced numerous documents. However, we found that the sheer number of documents was not an accurate indication of the number of complaints because in many instances individuals submitted several documents rewording the same complaint.

Overall, we found no specific trends in the nature of the complaints related to the Family Court. Complainants often appeared to lack an understanding of the complaints process or the court system. We also found that although complaints expressed dissatisfaction with judges, attorneys, court processes, or court staff, ultimately, the complaints seemed to be directed at the case's outcome.

Few complaints were found in files at the Family Court, but file access was limited

Although we found relatively few complaints at the Family Court, restrictions imposed on access to files negatively impacted our ability to conclude anything meaningful about the complaints received overall. The Judiciary-assigned liaison to our audit, the senior family court judge of the First Circuit, denied our request to review her correspondence files out of concern for the privacy of individuals in the files that she believed was protected by law. In addition, before we were given access to confidential case files, some senior family court judges reviewed the files to ensure the nondisclosure of sensitive case-related information. Several judges stated that they were required by law to protect privacy interests of children. We had also requested all correspondence files containing complaints, but were provided only copies of the complaints. Due to these restrictions, we can only report on the complaints that were provided to us.

From correspondence files, we found 15 complainants had submitted complaints in one form or another. Together, these individuals submitted a total of 31 complaints, the nature of which varied. The First Circuit chief court administrator provided records of seven complainants. Some were memos written by court staff documenting a complaint received over the phone. In one complaint, an attorney objected to the termination of calendar services. In another, the complainant felt that a staff member's questions were offensive. A third complained that a staff member was driving a state car too fast. The Third Circuit reported

having no correspondence containing complaints. The Second Circuit's correspondence showed records of three individuals who lodged a total of 19 complaints. As evidence of a complaint, the Fifth Circuit provided us with a letter concerning district court files, which we concluded as not qualifying as a complaint.

We reviewed over 100 case files at each circuit and again found very few complaints. Most judges and court staff we interviewed told us they receive very few written complaints. The First and Fifth Circuits stated that they add written communications directed to the judge to case files.

We used a list of cases provided by the Family Court to randomly select some case files for review. We reviewed 165 cases at the First Circuit and 106 cases at the Fifth Circuit; in all, we found five complaints. At the Second and Third Circuits, we reviewed 124 and 112 case files respectively and found no complaints. Exhibit 2.1 displays the number of complainants found at each circuit.

Exhibit 2.1
Complaints Found in Correspondence of Judges or Chief Court Administrators

Circuit	Source	No. Complainants	No. Complaints	Responses Provided	Object of Complaints					
					Judge	Attorney	Court Staff	Court Ruling	Court Process	Other
First Circuit	Correspondence	7	7	4	-	-	4	-	5	-
	Case Files	4	4	-	1	1	1	2	3	-
Second Circuit	Correspondence	3	19	-	6	-	3	4	15	-
	Case Files	0	-	-	-	-	-	-	-	-
Third Circuit	Correspondence and Case Files	0	-	-	-	-	-	-	-	-
Fifth Circuit	Correspondence	0	-	-	-	-	-	-	-	-
	Case Files	1	1	0	-	-	-	-	-	1
Total		15	31	4	7	1	8	6	23	1

The First Circuit chief court administrator provided evidence of resolution for three of the seven complainants. We found nothing to indicate the complainants' level of satisfaction with the outcomes.

The Judiciary's rule barring judges from accepting *ex parte* communications may have limited the number of complaints recorded at the various circuits. "*Ex parte*" refers to situations in which only one party, without their adversary, appears before a judge. Canon 3(b)(7) of the Judicial Code of Conduct states that

a judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding,

except under certain circumstances such as for administrative or scheduling purposes. The Third Circuit reported that clerks are instructed to return any case-related written communications back to the sender with a form letter indicating that the judge is not permitted to receive *ex parte* communications. The Fifth Circuit reported that it also recently adopted the practice of returning written *ex parte* communications with a form letter.

Complaints submitted to our office appeared to be about case outcomes

In response to our advertisement, we received voluminous documents from the public. We reviewed all documents and found the number of separate complaints much smaller. In numerous instances, individuals sent many documents, each very similar to the next except for changes in a few words. We identified 81 different complainants who submitted 854 documents. Of the 854 documents, 733 were on forms that were not of our making. Fifty of the 81 complaints used these forms to submit complaints. The widespread presence of these forms may have contributed to people submitting complaints, as 42 people submitted more than one form. We found the most common situation to be complainants who submitted several pages on a single subject, where each document contained a different version of the same complaint.

We also received copies of letters people had sent to other agencies. We received only 67 letters specifically addressed to our office and 55 letters that were addressed to other agencies but contained a complaint that appeared to be court-related. Additionally, two individuals submitted over one hundred documents apiece, which contained complaints of various kinds. However, many complaints were very similar.

We often found it difficult to identify the nature of a complaint because many complaints contained exclamations or allegations but lacked descriptive information about the presumed misconduct. For example, several complainants claimed that either the judge was sexually biased, the judge or court system was corrupt, the attorney and judge were in collusion, or that the judge violated due process. These complaints contained no specific description of what actions were inappropriate. Our ad requested that complaints be submitted on two pages, which should have been enough space to describe the particular action considered inappropriate. In many of the documents we received, individuals had failed to effectively use the allowed space to describe

specific inappropriate conduct and often only used a few sentences to make generalized allegations.

Although complaints expressed dissatisfaction with judges, attorneys, or court processes, they were often ultimately directed at the case's outcome. For instance, several complaints claimed that a judge did not accept evidence and decided the case without hearing all the evidence. This allegation appears to be directed against the judge, but is also implying that the judge would have decided the case differently with more evidence. In a complaint about a court process, an individual alleged that a guardian ad litem lied in court. This also assumes that the case's outcome was affected by the guardian ad litem's presumed lies.

Many complainants also appeared to lack an understanding of the court system. For instance, some of the complaints alleged that a judge relied too much on a social worker's report in deciding a case. Others complained that attorneys "twisted facts" or that a temporary restraining order was fraudulent or granted based on only allegations. These complaints are simply by-products of the court's adversarial system, in which each party attempts to bring forth evidence in its best possible light and create doubt in the opposing side's evidence for the fact-finder—the judge. An opposing attorney will present facts most favorable to the client; it is the responsibility of the opposing side to cross-examine witnesses so as to cast doubt on their testimony if necessary. A lack of understanding of this adversarial system is likely to produce complaints that certain individuals were acting inappropriately.

Complainants also seemed to lack an understanding of the complaints process—specifically, whom they can complain to and what they can complain about. Of 81 complainants, 31 complained about agencies not subject to the Family Court's jurisdiction, such as the police department, the Child Support Enforcement Agency, Child Protective Services, and the public defender's office. Some of these complaints should have gone to the Office of the Ombudsman. In these situations, better informational material about what complaint systems can accomplish may help reduce misunderstanding.

Complaints were also found at the Judiciary's administration

We also reviewed complaints provided by the chief justice and the Public Affairs Office of the Judiciary's administration. We found these to be of similar nature and diversity as those discussed above. In most cases, the chief justice's and the public affairs' offices attempted to resolve complaints by directing complainants to seek redress at other agencies or through other processes, such as the Office of Disciplinary Counsel, Commission on Judicial Conduct, judicial appeals process, or another government agency. Except for one case, we found no evidence

of the complainant's level of satisfaction with the Judiciary's responses. Exhibit 2.2 shows the breakdown of complaints lodged against the Family Court at the chief justice's office and the Public Affairs Office.

Exhibit 2.2
Complaints Found in Correspondence Files of the Chief Justice and Public Affairs Offices

Location	No. Complainants	No. Complaints	Resolution Provided	Object of Complaints					
				Judge	Attorney	Court Staff	Court Ruling	Court Process	Other
Chief Justice	38	51	51	5	5	9	30	11	4
Public Affairs Office	3	3	3	-	-	-	-	1	2
Total	41	54	54	5	5	9	30	12	6

Lack of a system results in inconsistent complaint resolution

Although the Judiciary and several state agencies can field various complaints from the public, the absence of a system within the Family Court that both specifically manages complaints and also directs complainants to an appropriate agency or process for their grievances, results in inconsistent complaint resolution. Court staff lack adequate policies and procedures and sufficient training to guide them in providing consistent answers and resolution to complainants. Staff training occurs mainly on-the-job. As a result, the quality of complaint resolution may depend on the staff person providing the service, not the substance of the complaint.

Resolution of complaints is dependent on who receives the complaint

Many different Family Court employees interact directly with the public and may receive complaints, including court clerks, court administrators, service center personnel, and judges. Each employee's knowledge of the various complaints processes relating to the court system affects the quality of information provided and consequently the effectiveness of the resolution. Complainants are likely to receive greater satisfaction when directed to the appropriate agency for handling the type of complaint they wish to lodge. If people are directed to the wrong agency, the complaint will likely go unaddressed, and the complainants will experience frustration.

We found that court clerks do not provide consistent information to complainants. Court staff also do not regularly instruct complainants to file a formal complaint or reliably know how a formal complaint is filed.

Some staff told us they do not ask complainants whether they would like to file a formal complaint; those who did ask referred complainants to different individuals and agencies. Chief court administrators whom we interviewed correctly identified the agencies within the Judiciary that receive and investigate complaints against attorneys and judges, but court clerks were often unaware of these agencies. Some supervisors and line staff knew about the Office of the Disciplinary Counsel and the Commission on Judicial Conduct, but others did not. Instead of referring the public to the Commission on Judicial Conduct, some staff instructed people to write letters to the senior family court judge for a complaint against a judge. Clearly, how the court user's concerns are met will depend on which court staff the person deals with first.

Some jurisdictions outside Hawaii have used brochures to explain their court's complaints processes to court users. We identified a number of common elements used in other jurisdictions' court systems and ombudsman's offices, such as informing the public about appropriate subjects for a complaint, where to file, what to file, what information to provide, how long the process will take, what happens after a complaint is filed, and the different possible resolutions. No such information is currently available at Hawaii's Family Court. An informational brochure would standardize the information provided about various complaints processes available to the public and what to expect from each process.

The Family Court also does not have a consistent method for recording complaints. In the First and Fifth Circuits, clerks are instructed to file all case related correspondence, whether or not they contain complaints, in the respective case file. The First Circuit senior family court judge explained that some litigants' correspondence may be their court pleading and should end up in the case files. In the Second Circuit, the family court director maintains a separate file for case related correspondence containing complaints. The Third Circuit returns all correspondence to the sender because it is considered *ex parte* communication. In addition, the chief court administrator does not maintain a complaints file after he addresses a complaint. The Fifth Circuit recently changed its procedure so that it no longer accepts case-related correspondence, and now returns correspondence to the sender with a form letter stating that the court cannot accept *ex parte* communications. This diversity in recording complaints makes it difficult for the courts or auditors to identify any system-wide problems raised by complainants that may need addressing.

The Family Court lacks policies and training to guide staff in addressing complaints

Inconsistencies in dealing with complainants and in recording complaints result from a lack of policies, procedures, and training. In our meetings

with court personnel, no one was able to provide us with adequate policies and procedures describing how court staff should handle and resolve complaints. Many staff received training in dealing with irate people and customer service in 1995, but the training did not include functions and operations of the Judiciary's various complaints processes nor where to direct people who have complaints about court-related matters.

For the most part, court staff use the chain of command to resolve complaints, and training has been primarily on-the-job. Staff generally request help from a supervisor if they cannot satisfy a complainant. Supervisors who cannot satisfy a complainant, in turn, ask another supervisor up the chain of command. Eventually, the chief court administrator may get involved. Complainants may also contact judges' clerks with verbal or written complaints. An administrator stated that each person develops his or her "own style" for handling complaints and working with the public through on-the-job training, and several staff agreed that they learned to address complaints in this manner. Reliance on such training results in varying levels of court staff expertise and inconsistent services. The Family Court could easily rectify this situation by adopting adequate policies and procedures and undertaking sufficient staff training regarding the different complaint agencies available for court related matters and how to inform the public of these services.

Proper policies and training would help court staff better serve customer needs and reduce costs. A court staff well-trained in the different complaints processes would be able to provide better information to court users to assist in resolving a complaint on first contact. Properly trained and informed staff would also help court users clarify their points of dissatisfaction. Resolving users' complaints on first contact would save money by eliminating unnecessary additional contacts, which escalate costs.

For instance, the Office of the Disciplinary Counsel and the Commission on Judicial Conduct follow specific procedures and guidelines in reviewing the conduct of attorneys and judges. These procedures include details on how to file a complaint, appropriate subject for complaints, how complaints are reviewed, and what the complainant can expect. Court staff with adequate knowledge of these processes would be able to direct people to the appropriate agency and be in a better position to provide court users with accurate information as to complaint options. Referring court users to an appropriate agency saves staff time and effort at the other complaint agencies and also reduces user dissatisfaction arising from being routed from office to office.

Inconsistent processing inhibits opportunities to use complaints to improve the Family Court

The Family Court’s inconsistent handling of complaints reduces its opportunities for improving the court’s services. Staff in the Family Court believe that, because of their scarcity, the court does not need to record and keep track of complaints; staff also believe that they hear more inquiries than complaints from the public. While leading organizations consider complaints as opportunities to improve service and reduce costs, the attitude expressed above indicates that the Family Court neglects to see the opportunities offered by customer feedback.

The court does not recognize a need to document complaints

The Family Court does not document or record complaints and believes that most complainants are mostly venting. Many of the staff we interviewed—from clerks to court administrators and senior judges—stated that the Family Court does not get many formal complaints. Some staff said they do get verbal complaints, but that they interpreted this as “venting”; some also believed that most complaints were mainly from a few individuals. Several judges told us that the judicial process itself was the Judiciary’s formal complaints process. Together, these comments reflect the court’s perspective that recording or documenting complaints is unnecessary.

Complaints we received from the public seem to contradict the Family Court’s outlook on the need to document and record complaints. Although many complaints may be unsubstantiated and there may be reasonable explanations to resolve the complaints, the mere presence of these complaints suggests there are problems that need investigating. However, the problem may be as simple as improving communications between the court and its users.

Complaints may contain valuable feedback to improve program effectiveness

The Family Court fails to appreciate that complainants’ venting, or letting out their frustrations, may contain useful information. If particular complaints are often repeated, investigation may be warranted if a specific area is repeatedly giving rise to frustration amongst court users.

A study of best practices in resolving customer complaints conducted by the Federal Benchmarking Consortium found that best-in-class companies consider complaints as customer feedback, which can be used to improve service performance and reduce cost. The study found that complaint data, entered into an information system, can be analyzed and used to identify, and therefore fix, root causes of dissatisfaction. The study recommended that government agencies, too, consider complaints as customer feedback alongside other measures of customer satisfaction and use them as opportunities to improve.

We found that the Family Court has similar opportunities to collect complaint data and use it to improve services. Although most of the complaints we found were ultimately directed at changing the outcome of the case, some complaints contained interesting allegations that may be worthwhile to record and track. For example, a few complainants claimed they were given insufficient time to present their cases and that the court suppressed evidence. We realize that judges are responsible for managing their cases in court, but this may be an area that the Judiciary needs to investigate to determine whether fairness and equity are being replaced by procedures aimed at reducing court backlogs. In another area, several complainants believed inequities exist in the guardian ad litem/social worker program. Complaint data could be used to determine the effectiveness of this program and highlight areas for improvement.

Civil service reform provides framework for a public complaints process

The Civil Service Reform Law, which became effective on July 1, 2002, requires all state departments to establish procedures for an internal complaints process for employee-related grievances. The law also states that this internal complaints process could be used for other matters, such as public complaints.

A Department of Human Resources Development representative informed us that under this new law, a complaint is defined broadly to mean any kind of grievance from a state employee against another employee, or from the public against an employee. The representative also stated that the current draft of the department's administrative rules interpreting this law requires executive departments to use this internal complaints process for public complaints against state employees. However, although the Judiciary will need to comply with creating the internal complaints process for employee grievances, use of the same process for public complaints would remain the Judiciary's decision. In the spirit of improving customer service, we believe the Judiciary should adopt rules that allow the public to utilize the same internal complaints process.

Poor Planning Impinges on the Effectiveness of Customer Service Efforts

In 1999, the Judiciary implemented the Ho'okele Court Navigation project to improve customer service by instituting public service centers and concierge desks at strategic court locations. At the time, the Judiciary's "We Value Your Opinion" surveys had already been in use throughout the state's courthouses for several years. These surveys are designed to solicit comments from the public concerning the Judiciary, and Family Court staff have also sent them to the public as a means of documenting complaints. Although the Judiciary has other programs

aimed at improving customer service and increasing public awareness of the Judiciary overall, these two projects directly relate to the Family Court's complaints process.

While initial evaluations of these two programs showed positive results, our review indicates the programs are no longer effective in meeting customer needs and should be re-evaluated. An increase in self-represented litigants has created additional complexities for the court, and the Family Court service center needs to make adjustments accordingly. In addition, the Judiciary no longer uses its surveys effectively and needs to re-evaluate them to include questions that help determine the public's level of trust and confidence in the Judiciary.

Increase in litigants who represent themselves has increased the need for more user-friendly and effective customer service processes

Nationwide, the number of self-represented litigants appearing in family courts has been rising. This increase has been attributed to various factors, such as increases in legal fees, and television programs with court content giving people an impression they can represent themselves. The presence of self-represented litigants in courts is not a new phenomenon, but the increase in their number has been surprising.

In addition, Family Court cases seem to attract more self-represented litigants than other types of cases. One reason may be that when parents divorce or separate, the additional cost of maintaining two households often makes it impossible to retain one attorney, let alone two. The Judiciary reported that in 1999, 35 percent of divorce cases in the First Circuit involve at least one unrepresented party. Other states have estimated that 65 to 80 percent of family court cases involve at least one self-represented litigant. In Hawaii, the Family Court has seen dramatic increases in self-represented litigants over the past three years. During FY1999-2000, there were 122 self-represented litigants in Family Court; in FY2000-01, there were 859; and by FY2001-02, there were 6,172 self-represented litigants in the Family Court.

Some states have implemented a self-help or service center to assist in providing the self-represented with equal access to the court system. Hawaii's self-help center was established in the First Circuit in 1999 and will be available at all judicial circuits in the future. However, the service center must overcome certain legal obstacles to be effective. In addition, several legal organizations believe that self-represented litigants' lack of knowledge of the court system is the primary reason for their dissatisfaction with the legal system.

Increase in self-represented litigants adds to court complexities

There is an inherent unfairness that the court must address when dealing with self-represented litigants; attorneys commonly have more education

and training than self-represented litigants. For instance, attorneys go through three years of law school after college and must be licensed to practice law. Attorneys also generally appear in court on a regular basis, whereas it may be the first court appearance for a self-represented litigant. Additionally, the self-represented litigant probably has fewer resources to afford expert testimony with which to rebut an adversary's expert testimony.

Self-represented litigants generally create a multitude of problems for the courts, such as court delays, increased demand on staff resources, need for multiple court appearances, increased post-judgment motions, and increased risk for judges. While Family Court staff find that some attorneys may require assistance in navigating the multitude of court procedures and forms, for most self-represented litigants, understanding court procedures may be daunting. This diminished understanding requires court staff to devote more time helping litigants to complete forms. In addition, self-represented litigants' unrealistic expectations that the court will solve all their problems, or their unwillingness to accept the court's judgment, often results in an increase in court filings or post-judgment motions. Furthermore, judges who try to assist self-represented litigants risk being perceived as unethically favoring one side. On the other hand, a judge who makes no effort to prevent a self-represented litigant from making errors that jeopardize the litigant's defense or claim may be denying the litigant "meaningful" access to the courts.

Across the nation, various professional organizations have given increased attention to dealing with self-represented litigants. The National Center for State Courts, American Bar Association, and American Judicature Society have recognized that courts need to do more to address the rising population of self-represented litigants. Some states have implemented a self-help service center to address this increasing population.

Court customer service initiatives must overcome legal obstacles

The Judiciary created its service center and concierge desk to assist court users; however, certain legal principles prevent these initiatives from being as effective as they could be in assisting the public to navigate the court system. For instance, although service center staff may explain court forms and procedures and also help users complete the forms, they must be careful not to give "legal advice." In addition, because they are not licensed attorneys, any staff who gives legal advice may be subject to penalties under Section 605-14, HRS, which prohibits the unauthorized practice of law. This thin line between giving legal advice and providing legal information further complicates service center staff's work. As a

consequence, staff are concerned about how much information they can give to the public. One service center staff stated that they are sometimes told to be careful about what they say. Another staff stated that what can be said could be confusing and sometimes she has to “bite her tongue” when helping customers.

Other jurisdictions have struggled with the definition of what constitutes “legal advice” and have made attempts to address it. For instance, Florida initiated a court rule defining the parameters of what court staff at family self-help centers may do to assist self-represented litigants. The rule allows staff to “engage in limited oral communications to assist a person in the completion of blanks on approved forms,” “provide general information about court process, practice, and procedure,” and other specific activities. The rule also proscribes what staff cannot do, such as “recommend a specific course of action,” “provide interpretation of legal terminology,” or “encourage or discourage litigation.” Similarly, Iowa has drafted guidelines that include answers to frequently asked questions, and New Jersey has placed answers to frequently asked questions that a self-represented litigant would ask on its web site.

Other jurisdictions have also implemented training programs on what constitutes legal advice, based on general principles from an article by the administrative director for the New Mexico state court system. The Michigan Court Support Training Consortium has developed a training program based on these principles and received an award from the National Association for Court Management for its efforts. The Hawaii Judiciary has informed us that its administration has been working on a definition of “what constitutes legal advice” and will be implementing training once the definition is finalized and tested.

Hawaii’s Judiciary claims that staff generally know what is “legal advice.” The Judiciary stated that during the planning of the service center, informal breakout sessions were held and staff were given factual situations to consider. Other than difficult situations, the Judiciary claims that staff know where to draw the line. Nevertheless, our interviews with staff indicated they think training would be helpful. Without adequate training, staff may be conservative in providing legal information, which limits the service center’s effectiveness.

While giving legal advice may be the major obstacle limiting the service center’s effectiveness, staff’s lack of knowledge of legal principles such as *ex parte* communications also influence the center’s effectiveness. From the complaints we received, some complainants claimed that judges commonly engage in *ex parte* communications. These allegations might have been resolved if service center staff had pointed out the *ex parte* rule, including the section that allows exceptions for scheduling or administrative purposes.

Overall, we found several factors that limit the Judiciary's ability to receive complaints:

- Judges cannot receive *ex parte* communications,
- The chief justice cannot interfere in an ongoing case because interference jeopardizes judicial independence,
- The appeals process is designed for resolving dissatisfaction over the court ruling, and
- Court staff are prohibited from practicing law and giving legal advice.

Customer service efforts are inadequate at informing the public about court system

In response to the chief justice's concerns about the lack of public understanding of the justice system, the Judiciary implemented several initiatives, including seminars, community gatherings, public presentations, and publications in newspapers relating to law week to inform the public about the justice system. While we commend the Judiciary's efforts, the number of self-represented litigants is still rising, and more efforts may be necessary to explain the court system and its limitations to such persons while they are physically in the courthouse.

The Legal Aid Society of Hawaii and groups that help self-represented litigants indicated that such litigants' knowledge of the court system and processes is a primary factor in their degree of satisfaction or dissatisfaction with the courts and their rulings. Understanding the court system must include a basic grasp of the limitations of the court system and its procedures.

To facilitate this understanding, other states' judiciary systems have created brochures to better explain the court system and its limitations to self-represented litigants. Some of these are available on the Internet, and usually provide information to the court user on:

- What to do when a complaint is about the disposition or ruling of a case,
- Whom to contact when a party cannot afford to pay court filing fees, and
- The limitations of the staff in giving "legal advice."

Self-represented litigants will continue to increase; ignoring this trend only perpetuates the court's inefficiencies. By providing more information rather than less, prospective litigants who have the ability to do so may be persuaded that they should engage an attorney. In addition, litigants who are better prepared for what will transpire in the courtroom will require less intervention or assistance on the part of the court. Conversely, without adequate information describing court processes and procedures, increasing numbers of self-represented litigants will continue to be confused and court proceedings will be delayed. This may ultimately result in added complaints.

Evaluations of customer service initiatives are not a priority

Program evaluation and analysis are important tools for measuring program effectiveness. They also help determine whether a program is producing desired results or effects and meeting its objectives and goals. Although a consultant to the Judiciary evaluated the customer service center after the pilot project in December 2001, no evaluation has been performed since the service center was transferred to the Family Court. The Judiciary has also not analyzed its public opinion surveys, which were intended to capture users' satisfaction with the court system but were sometimes employed as vehicles for complaints.

In FY2001-02, the Judiciary reported that 32,190 people visited the Family Court service center and concierge located at the First Circuit Court. The Judiciary also reported that court users completed 226 public opinion surveys in calendar year 2000. Although staff have remarked that these customer service initiatives are "good ideas," the Judiciary has not evaluated their effectiveness and may therefore be exacerbating some complaints. Nevertheless, the Judiciary is making plans to expand the service center initiative to other circuits, and touts the surveys as customer service communication tools.

Such failures to re-evaluate the customer service center after its transfer to the Family Court and to analyze its public opinion surveys indicate that assessment of the effectiveness of customer service initiatives are not a priority for the Judiciary.

Service center needs ongoing evaluation

Statistics reported by the Judiciary to represent the effectiveness of its service center do not convey meaningful information. The Judiciary reported that the Family Court service center serves an average of about 1,600 people per month. However, staff could not provide us with policies and procedures for recording statistics. The lack of policies and procedures to direct staff in tracking statistics results in inconsistent recording of meaningful data and a lack of awareness of the importance of the data. We found one staff did not track statistics at all. Staff stated

that sometimes they input such information when they have time, which may be a week or a month later. Several staff stated that they did not know what resulted from the data. We found that the only data reported is the number of users who come to the service center. In addition, repeat visitors are not differentiated on the report. At best, this report can only reveal how many people come to the service center; it does not illuminate the reason for the visit, nature of the conversation, question(s) asked, or customer satisfaction with the visit.

If reporting meaningless statistics about the service center's effectiveness continues, the Judiciary will not be able to show that its service center is effective in achieving its goals and objectives. Nevertheless, more money will be spent to add service centers and personnel to staff these centers for the other circuits.

The service center project was first implemented as a pilot program. During these pilot stages, information, such as case type (e.g., uncontested divorce, temporary restraining order, or paternity), service needs, and problems were recorded and evaluated. After the pilot period, the Center for Public Policy Studies evaluated the program and recommended its continuance, but also stated that the center should be continually evaluated. The center stated that a comprehensive, ongoing evaluation component designed to capture relevant information should yield findings that will help the court make corrections and refinements in its operations and service delivery.

We found that the service center no longer reports meaningful information. Without the necessary data, continued effectiveness cannot be determined nor compared to objectives and goals from a previous evaluation. Furthermore, we found no plans for evaluating the service center and concierge desks in the future. The supervisor for the Ho'okele project stated that no program evaluation had been done since December 2001; moreover, data similar to that collected and analyzed in the first evaluation is no longer analyzed.

The Judiciary needs to continue evaluating its service center so that lessons learned from the initial evaluation are not lost before their benefits can be appreciated.

Survey is not balanced

In 1993, the Judiciary's Public Affairs Office developed an eight-question survey entitled, "We Value Your Opinion." The survey's purpose is to solicit comments from customers of the court to gauge how well the Judiciary is serving the public, and thereby to improve court services. These surveys are located throughout the Judiciary. Staff commonly refer court users to the survey if users want to document their

complaints. However, we found the survey instrument flawed and survey results not analyzed or used to improve services and reduce future complaints.

The survey instrument was poorly planned. Typical survey planning procedures were neglected, and some questions are one-sided. A pretest, to ensure the survey is asking the right questions and the questions make sense to a respondent, was ineffectively performed. The Judiciary claimed that lack of funds affected its ability to conduct a thorough pretest of this eight-question survey. Moreover, three of the eight questions are duplicative; they all ask the respondent to rate the effectiveness of court services. In addition, answer scales on several questions are one-sided because they consist of “outstanding,” “good,” “average,” “fair,” and “poor.” “Average” and “fair” are very similar, and therefore bias the Judiciary’s opportunity toward more positive feedback. A balanced scale should have an equal number of positive and negative responses plus one middle, or neutral, category.

We also found that the Judiciary no longer uses the survey appropriately. After the first few years of its use, the Judiciary stopped collecting and tallying all answers from the survey into tables. The Judiciary reports that over the past four years it has received average ratings of 69 percent for “Outstanding and Good,” 15 percent for “Average and Fair,” and 16 percent for “Poor.” However, we question the usefulness of this report because the Judiciary only tallies the overall scale on the survey, which results in a general and skewed perspective of its services without providing specific information to help reduce complaints.

Furthermore, the survey fails to ask questions regarding in-court experiences, which should be relevant if the Judiciary intends to use the survey to gauge how well it is serving the public. The Judiciary should revise its survey instrument to collect meaningful data and then properly analyze all data collected, not just the overall rating.

Conclusion

The public’s trust and confidence in court systems are concerns across the nation. Hawaii’s Judiciary is also concerned, and followed other states in implementing a Family Court service center to improve customer service to the public. However, the Judiciary failed to realize that effective complaints avenues and processing is just as much a part of customer service as the service center. While the Family Court’s concerns over privacy issues restricted our ability to properly assess the number of complaints lodged at the court, our review found that improvements in complaints processing could be made. We also found the service center and public opinion surveys ineffective in reducing complaints.

Recommendations

1. The Family Court should develop policies and procedures for handling complaints and train its staff in all complaint processes available to the public. The training should include what action or information constitutes giving “legal advice.”
2. The Judiciary should be guided by Hawaii’s civil service reform law and establish a public complaints process. This process should include procedures for documenting and recording each complaint.
3. The Family Court should develop a brochure for the public detailing the different avenues for complaints. The brochure should describe appropriate subjects for a complaint, how to file a complaint, when to expect resolution of a complaint, and what additional steps can be taken if court customers are dissatisfied with the resolution. The brochure should also describe limitations faced by Family Court staff in giving advice. Similar to other states, the brochure could be made available on the Judiciary’s website.
4. The Judiciary should revise its public opinion survey to include questions about users’ in-court experiences and collect meaningful data. The Judiciary should then properly analyze all the data it collects, instead of only analyzing the overall rating.
5. The Judiciary should re-establish data measurement guidelines for its service center and re-evaluate the effectiveness of the service center in the Family Courts.

Response of the Affected Agency

Comments on Agency Response

We transmitted a draft of this report to the Judiciary on December 10, 2002. A copy of the transmittal letter to the Judiciary is included as Attachment 1. The Judiciary's response is included as Attachment 2.

The Judiciary responded that it appreciated our efforts and found our recommendations helpful, and that it will seriously consider them in light of available resources. The Judiciary expressed gratitude to the Auditor for acknowledging its efforts to serve court users efficiently and effectively and for developing recommendations that have the potential to make the courts more effective.

However, the Judiciary disagreed with certain observations relating to limits to our file access. The Judiciary stated that the Family Court fully cooperated with the audit and provided every file requested with no redactions. However, we note that we were not given full access to correspondence files and stand by our comment that restrictions imposed on access negatively impacted our ability to verify the number of complaints or our ability to conclude anything meaningful about complaints at the court.

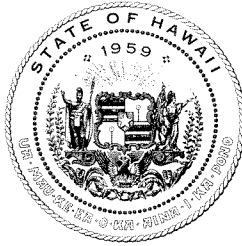
The Judiciary also indicated that although staff at service centers are often recipients of complaints from the public, their primary function is to provide directions to the public. The Judiciary responded that the report contains no evidence to suggest that the service centers are no longer effective in executing the functions for which they were created or that the need for service centers is declining.

However, we maintain that the Judiciary's statistics about the service center's effectiveness are meaningless since December 2001, because it has yet to properly evaluate its service centers. In light of an increasing number of self-represented litigants and plans to expand the service center, the Judiciary needs to evaluate its service centers to benefit from lessons learned and to use its resources wisely.

We made some minor changes to the draft report for the purposes of accuracy and clarity.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor
(808) 587-0800
FAX: (808) 587-0830

December 10, 2002

COPY

The Honorable Ronald T.Y. Moon
Chief Justice of the Supreme Court
The Judiciary
Aliiolani Hale
417 South King Street
Honolulu, Hawaii 96813

Dear Chief Justice Moon:

Enclosed for your information are three copies, numbered 6 to 8 of our confidential draft report, *Audit of the Family Court Complaints Process*. We ask that you telephone us by Thursday, December 12, 2002, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Wednesday, December 18, 2002.

The Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this confidential draft report.

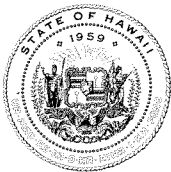
Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Maria B.J. Lhun

for Marion M. Higa
State Auditor

Enclosures


Family Court of the First Circuit — THE JUDICIARY • STATE OF HAWAII

POST OFFICE BOX 3498 • HONOLULU, HAWAII 96811-3498

Frances Q. F. Wong
SENIOR JUDGE

Steven S. Alm
CIRCUIT COURT JUDGE

Marcia J. Waldorf
CIRCUIT COURT JUDGE

Kenneth K. M. Ling
DIRECTOR

District Family Judges

R. MARK BROWNING
DARRYL Y. C. CHOY
KENNETH E. ENRIGHT
LINDA K. C. LUKE
PAUL T. MURAKAMI
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ALLENE R. SUEMORI
BODE A. UALE

December 18, 2002

The Honorable Marion M. Higa
State Auditor
Office of the Auditor
465 South King Street, Room 500
Honolulu, Hawaii 96813-2917

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 OFFICE OF THE AUDITOR
STATE OF HAWAII

Dear Ms. Higa:

Thank you for the opportunity to comment on the confidential draft report, "Audit of the Family Court Complaints Process." We appreciate the time spent by your audit team in conducting the investigation and the effort expended to meet with complainants and court staff on all islands.

We appreciate your acknowledgment of the efficacy of various initiatives taken by the Judiciary and the Family Court and the nature of the Family Court's work. In particular, we appreciate the acknowledgment that:

- Few complaints were found in files at the Family Court. After reviewing more than five hundred cases statewide (cases that were chosen by the Auditor, with no censorship by the Judiciary), the Auditor found a total of only five complaints. (p. 13)
- Many complaints are simply by-products of the court's adversarial system. (p. 15)
- Many complainants complained about agencies not subject to the Family Court's control. (p. 15)
- Complainants often appeared to lack an understanding of the complaints process or the court system, and the complaints seemed directed at the case's outcome. (p. 14)
- The Judiciary has implemented several customer service initiatives to better serve the public. (p. 11)
- The Judiciary is commended for implementing several initiatives, including seminars, community gatherings, public presentations, and publications in newspapers to inform the public about the justice system. (p. 24)
- The Family Court has seen dramatic increases in self-represented litigants over the past

three years. (p. 21) Self-represented litigants generally create a multitude of challenges for the courts, such as increased court delays, increased demand on staff resources, increased risks for judges, etc. (p. 22)

- Self-represented litigants have unrealistic expectations that the court will solve all of their problems. This factor and their unwillingness to accept the court's judgment often result in increased court filings or post-judgment motions. (p. 22)
- Various avenues are available to address grievances relating to case disposition and the court system. (p. 5)

There are certain observations with which we respectfully disagree. In Chapter 2, the report states that "... restrictions imposed on access to files negatively impacted our ability to conclude anything meaningful about the complaints received overall." (p. 12). Moreover, other unfavorable statements regarding access to case files are made in Chapter 2. We wish to emphasize that the Family Court fully cooperated with the audit and provided every file requested with no redactions. In fact, Chapter 1 acknowledges that "the Family Court provided us with case files that consisted of all Family Court cases, on record, from various categories, such as paternity, child custody, and divorce for FY1998-99 to FY2001-02". (Emphasis added, p. 9)

The report also draws the conclusion in Chapter 2 that "...our review indicates the [Ho`okele Court Navigation project and the Judiciary's 'We Value Your Opinion' surveys] are no longer effective in meeting customer needs..." (p. 21). At the same time, however, in Chapter 1, the report correctly states: "The Ho`okele service centers provide self-help packets and information about court proceedings, information about services provided by related Judiciary offices and external agencies... and one-on-one explanation of court forms and procedures, and assistance in the completion of court forms." (p. 4). Although the staff at these service centers often are the recipients of complaints from the public, their primary function, as the report points out, is to provide directions to the public. The report contains no evidence to suggest that the service centers are no longer effective in executing the functions for which they were created or that the need for Family Court service centers is declining. Indeed, as the report points out, the number of self-represented litigants is increasing. Clearly, as the number of self-represented litigants increases, so, too, will the need for the courts to provide assistance to the public regarding court forms and procedures. At the same time, the court must tirelessly preserve its strict neutrality and must continually guard against providing assistance that may give an advantage to one side of a dispute.

Your recommendations on page 28 are helpful, and the Judiciary will seriously consider them in light of available resources. We especially agree with you that many people do not understand the court process and that the Judiciary has a continuing responsibility to educate the public. With a total statewide caseload of 54,347 in FY2000-01, the Family Courts have been compelled to make difficult resource allocation decisions in regards to improving operational and organizational efficiency. Considering the budgetary limits that have been imposed, judges and staff have worked hard to provide exemplary "customer" service while, first and foremost, protecting the neutrality of the adjudicative proceedings in

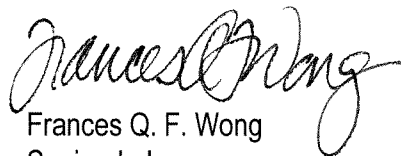
The Honorable Marion M. Higa
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which the welfare of children and families is determined.

Concern with the integrity of the judicial process, including judicial review of family court decisions and ensuring public confidence therein are integral to many of the Judiciary's on-going initiatives in the area of access to the courts. The need for continued diligence on the part of all judges and Judiciary staff is critical to maintaining respect for the court system.

Again, we sincerely appreciate the efforts of you and your staff. The audit will help increase public awareness of the many limitations and difficulties under which the Judiciary must operate. Under the strong leadership of Chief Justice Ronald Moon, the judges and staff of Family Court and the entire Judiciary have made, and will continue to make, a concerted effort to serve court users efficiently and effectively. We are grateful to the Auditor for acknowledging these efforts and for developing recommendations which have the potential to make the courts even more effective.

Sincerely,


Frances Q. F. Wong
Senior Judge